

California Fair Political Practices Commission

MEMORANDUM

To: Chairman Getman, Commissioners Downey, Knox and Swanson

From: Natalie Bocanegra, Commission Counsel
John Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Date: January 6, 2003

Subject: **“Public Generally” Exception for Small Jurisdictions: Repeal of Regulation 18707.3 and Discussion of Regulation 18707.1**

I. SUMMARY

Representatives of a number of small jurisdictions have stated that, as a result of Phase 2 Conflict of Interest Regulation Improvement Project amendments, their public officials are frequently disqualified due to conflicts of interest arising from a real property interest in their personal residence under regulation 18707.3. At its December 2002 meeting, the Commission decided to repeal regulation 18707.3. Before taking final action to repeal the regulation, the Commission requested additional input regarding the application of the “public generally” exception of regulation 18707.1 to small jurisdictions. That regulation provides for a general exception applicable to all public officials in any jurisdiction. This memorandum discusses the application of that general exception, focusing on the impact of Phase 2 changes, which have significantly diminished the need for regulation 18707.3 as discussed below.

II. INTRODUCTION

Commission regulations permit a public official who has a conflict of interest to participate in a decision if the “public generally” exception applies. The “public generally” exception contains a general rule which is provided at regulation 18707.1, followed by specific rules which apply to particular circumstances. Regulation 18707.3, one of these specific rules, was developed to apply to conflicts of interest arising from the principal residence of an official of a small jurisdiction.¹

In December 2001, Commission staff attended a League of Cities meeting to discuss the small jurisdiction exception with representatives from a number of small cities.² Several of these small cities subsequently submitted written comments.

¹ A small jurisdiction is defined as a jurisdiction with a population of 25,000 or less. (See regulation 18707.3(a)(1).)

² Representatives from Yountville, Emeryville, Carpinteria, Willits, Del Mar and Calistoga attended this meeting.

The Commission heard pre-notice discussion on this issue at its September 2002 meeting. At that time, staff was directed to continue exploring possible amendments to both the small jurisdiction regulation 18707.3 and the general “public generally” rule of regulation 18707.1. Members of the Commission also expressed a desire to hear from other community members on this issue. A press release pertaining to this topic and requesting public comment was issued during early November 2002.

In December 2002, staff presented the Commission the following regulatory options reflecting the Commission’s, staff’s, and the public’s input:

OPTION A: Delete the small jurisdiction exception and require that small jurisdictions apply the general “public generally” rule, without amendment. (Reflected in Attachment 2.)

OPTION B: Amend regulation 18707.3, the small jurisdiction exception.

OPTION C: Delete the small jurisdiction exception and amend regulation 18707.1, the general “public generally” rule, to include provisions that specifically apply to small jurisdictions.

The Commission considered these options, focusing discussion on the scope of regulation 18707.3. The Commission also heard testimony from Karin Troedsson, Deputy City Attorney for the Town of Yountville; Eric Knight, member of the Yountville Town Council; and Michael Martello, City Attorney for the City of Mountain View and liaison to the League of California Cities.

The Commission determined that regulation 18707.3 is no longer useful and decided to repeal it. However, the Commission requested the Town of Yountville and other members of the public provide additional information as to how regulation 18707.1 is used by officials in small jurisdictions before formally repealing regulation 18707.3. In particular, the Commission requested specific input as to why the general “public generally” rule (regulation 18707.1) cannot be used by small jurisdictions and what can be done to address any such issues.

In the latter part of December 2002, staff mailed several letters to those who offered public testimony on this matter. To gather further input from Yountville officials and citizens, staff also contacted representatives of Yountville. In response to staff’s request, Karin Troedsson submitted a letter requesting that this matter be heard at the February 2003 Commission meeting since Yountville’s town council would not meet to discuss this issue until the council’s January 7th meeting. Since these timelines make it difficult to provide the Commission the input it seeks, staff has arranged to attend the Yountville town council’s January 7, 2003, meeting to answer questions and to gather information that may be useful to the Commission at its January 17, 2003, meeting.

Staff also requested input from city attorneys of jurisdictions with populations of 25,000 or less. A number of questions were posed for the purpose of obtaining information on application of the general “public generally” rule, regulation 18707.1. At the time of this

memorandum, some comments have been received and are summarized in this memorandum. A few jurisdictions have requested additional time to submit information.³

III. DISCUSSION

Need for the “public generally” exception is triggered only once an official has determined that it is reasonably foreseeable that the official’s real property interest will be materially affected by a governmental decision. Amendments made as part of Phase 2 have reduced the level of frequency that previously resulted in disqualification by public officials where their real property interests are implicated. After Phase 2 changes, real property located beyond 500 feet of property which is the subject of the decision is now presumed to *not* be materially affected by the decision. Prior to the change, public officials needed to determine if property located beyond 300 feet and within 2,500 feet of the property which was the subject of the decision triggered a conflict of interest for the official. Today, a “public generally” exception analysis is only required if an official’s property is within 500 feet of the subject property.

The current general rule is provided by regulation 18707.1 which, in relevant part, states:

“(a) Except as provided in Government Code sections 87102.6 and 87103.5, the material financial effect of a governmental decision on a public official’s economic interests is indistinguishable from its effect on the public generally if both subdivisions (b)(1) and (b)(2) of this regulation apply.

(b) Significant Segments and Indistinguishable Effects.

(1) Significant Segment. The governmental decision will affect a ‘significant segment’ of the public generally if any of the following are affected as set forth below:

¶...¶

(B) Real Property. For decisions that affect a public official’s real property interest, the decision also affects:

(i) Ten percent or more of all property owners or all homeowners in the jurisdiction of the official’s agency or the district the official represents; or

(ii) 5,000 property owners or homeowners in the jurisdiction of the official’s agency.

¶...¶

(E) Exceptional Circumstances. The decision will affect a segment of the population which does not meet any of the standards in subdivisions (b)(1)(A) through (b)(1)(D), however, due to exceptional circumstances regarding the decision, it is determined such segment constitutes a significant segment of the public generally.

(2) Substantially the Same Manner: The governmental decision will affect a public official’s economic interest in substantially the

³ These include Piedmont, Yountville, and Jackson (which subsequently was able to provide comments in time for inclusion in this memo).

same manner as it will affect the significant segment identified in subdivision (b)(1) of this regulation.”

This general rule will apply in any situation where a public official can show that the decision will affect his or her real property in substantially the same manner as the decision will affect a significant segment (i.e., 10% or 5,000 of certain property owners or homeowners) of the public generally.

To apply this exception to a conflict of interest arising from real property, an official determines if the identified significant segment is affected by the decision. (Regulation 18707(b)(3).) If the answer is yes, then the official determines if the real property is affected by the decision in substantially the same manner as other real property in the applicable significant segment. (Regulation 18707(b)(4).) If the answer is yes as to each real property, then the effect of the decision is not distinguishable from the effect on the public generally, and the official may participate in the decision. (*Ibid.*)

Unlike the small jurisdiction exception (regulation 18707.3), the general rule does *not* have additional restrictive requirements which relate to:

- A maximum population threshold (25,000 or less)
- Qualification of the property as the official’s personal residence
- The absence of a direct material financial effect on the official’s property
- The distance of the official’s residence from the subject property (more than 500 feet)
- The number of properties (100) under separate ownership within a certain distance (2,500 feet) from the subject property
- The size of the parcel (one acre or more) on which the official’s residence is located

Under regulation 18707.1 (the general rule), the exception applies without regard to the population of a jurisdiction or its geographic parameters. Therefore, in a very small jurisdiction, or a jurisdiction with districts, ten percent of property or homeowners, can be smaller or larger than 100 properties and the size of a parcel is not determinative as to whether the exception applies.

It is also important to emphasize that the general rule applies regardless of whether the official’s personal residence was involved “directly” or “indirectly” in the governmental decision. In other words, it does not have a restriction on the distance (500 feet) that an official’s residence must be located from the property which is the subject of the decision. Therefore, it is a less complicated approach than one reducing the 500-foot factor in regulation 18707.3 to 300 feet. This would result in the application of one test in Step 4 of the standard conflict-of-interest analysis (determining whether the economic interest is directly or indirectly involved in a decision) and a different test in Step 7 (the “public generally” exception).

Additionally, the “substantially the same manner” test of the general rule does *not* define the area in which properties experiencing a substantially similar effect from the decision (i.e., the “significant segment”) must be located. Generally speaking, this allows inclusion in the segment of more persons who may be similarly situated. The small jurisdiction exception requires that the effect of the decision on the official’s real property interest will be substantially the same as the effect of the decision on the majority of the residential properties which are beyond 500 feet, but within 2,500 feet of the boundaries of the real property that is the subject of the decision. (Regulation 18707.3(a)(6).)

Finally, since the Commission amended the “public generally” exception during Phase 2, the “public generally” exception does not need to be applied as often based on a survey of past advice letters.⁴ (See Section B discussion.)

A. Applying the General Rule to Small Jurisdiction Factual Patterns

Since the December 2002 Commission meeting, there has been limited public input regarding why regulation 18707.1 may not adequately work for small jurisdictions. Therefore, staff has summarized, by analogy, how the general rule would work for decisions before public officials in small jurisdictions. Each of the following cited letters applied the small jurisdiction exception. The analyses in the examples below illustrate how these letters could have been analyzed under current Phase 2 rules *and* the general rule of regulation 18707.1, as opposed to the small jurisdiction exception.

These examples show that, where the small jurisdiction exception is met, the general rule can be met or is not needed after the Phase 2 amendments. Consequently, repeal of regulation 18707.3 would have no effect on an official’s participation in the following types of scenarios. For example, in the *Johnson* letter, below, the Phase 2 rules now would most likely conclude that no conflict of interest exists in the first instance, in effect negating a need to proceed to the “public generally” exception step.

Example 1: *Boga* Advice Letter, No. I-01-293

The *Boga* letter contains both general rule *and* small jurisdiction exception analysis. The small jurisdiction analysis was conducted specifically with regard to the official’s principal residence. The general rule was applied for the official’s other types of economic interests. This advice letter concluded that the small jurisdiction exception was met. The example below depicts how the general rule, rather than the small jurisdiction rule, would work had it been applied with regard to the official’s residence.

⁴ The Commission reviewed and revised regulation 18707.1 and made changes to other “public generally” exceptions, including regulation 18707.2 (Special Rule for Rates, Assessments, and Similar Decisions) and regulation 18707.7 (Public Generally: Industries, Trades or Professions). After much public comment regarding the need for a regulation addressing “residential property” issues affecting both landlords and tenants, the Commission also added regulation 18707.9 (Public Generally – Residential Properties).

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| <u>Jurisdiction:</u> | Seal Beach |
| <u>Population:</u> | 24,157 |
| <u>Decision:</u> | Decision relating to the development of a light industrial park. |
| <u>Official's economic interest:</u> | Principal residence: residential unit in the Leisure World housing complex where ownership interest was based on a "share" of stock in the mutual corporation created to construct and maintain the complex. |
| <u>Location of official's property:</u> | Residential unit is within 825 feet of development site. (Note that the common areas in the complex are within 500 feet. Therefore, the full conflict of interest analysis was conducted in this letter.) |
| <u>"Significant Segment":</u> | The significant segment is affected if 10% or more or 5,000 of the property owners are affected. 40% of the jurisdiction's population are Leisure World residents, and there are 6,400 residential units in Leisure World. Therefore, since those with an interest in Leisure World are considered property owners, the 10% population standard is met. |
| <u>"Substantially the Same Manner":</u> | If the decision will affect the official's economic interest in substantially the same manner as it will affect the significant segment, the exception applies. |

Example 2: *Swiney* Advice Letter, No. A-01-206

This example summarizes actual post-Phase 2 advice issued to the City of Reedley. The *Swiney* letter looked at how both the small jurisdiction exception *and* the general rule applied. It determined that requirements of the small jurisdiction exception would not be met since the official's residence was located within 500 feet of the subject property. Therefore, the letter proceeded with analysis under the general rule. The general rule requirements were also not met in this instance.

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| <u>Jurisdiction:</u> | Reedley |
| <u>Population:</u> | Fewer than 25,000 |
| <u>Decision:</u> | Decision to allow construction of a new Wal-Mart store. |

Official's economic interest:

Principal residence.

Location of official's property:

Residence is located within 500 feet of construction site. (Therefore, regulation 18707.3 **did not** apply.)

"Significant Segment":

Only 30 to 40 homes are located similarly to the official's residence in relation to the site. This letter concluded that it did not appear that 30 - 40 homes constituted 10% of all property owners or all homeowners in the jurisdiction.

Note:

Since significant segment prong was not met, the "public generally" exception (general rule) did not apply. The "substantially the same manner" test was not analyzed.

Example 3: *Johnson* Advice Letter, No. A-00-150

This advice letter concluded that the small jurisdiction exception was met. However, under the Phase 2 rules, it would be presumed that no conflict of interest exists because the official's residence is more than 500 feet from the subject property.

Jurisdiction:

Scotts Valley

Population:

10,698

Decision:

Decision relating to a residential development project.

Official's economic interest:

Principal residence.

Location of official's property:

Residential unit is within 732 feet of development site. As a result of Phase 2 amendments, the official's residence is considered indirectly involved, and presumption of nonmateriality applies. Therefore, no conflict of interest is presumed.

Lastly, as mentioned in a previous memorandum, the *Troedsson* Advice Letter, No. A-01-172, applied the general rule rather than the small jurisdiction exception to a floodwall decision before Mayor Holt of Yountville.⁵ This letter concluded that Mayor Holt was permitted to vote under the general rule.

⁵ The small jurisdiction exception of regulation 18707.3 did not apply since the mayor's property was within 500 feet of the subject property and, therefore, directly involved in the decision. The small jurisdiction exception did not apply to the facts of the *Swiney* letter, discussed above, for the same reason.

B. Survey of Past Advice Letters (Attachment 1)

Staff also reviewed other past advice letters to determine how the small jurisdiction exception and the general rule have been applied to situations involving officials in small jurisdictions. (See Attachment 1.)

Based on this review, staff found in a majority of the advice letters analyzing the small jurisdiction exception between 1991 to the present, a public official would now not even have to proceed to the “public generally” analysis since, under Phase 2 rules as applied to the facts of these letters, there would be a presumption of non-materiality, resulting in no conflict of interest. For example, the small jurisdiction exception was found to apply in five advice letters issued to officials of Scotts Valley. (*Johnson* Advice Letter, A-00-150; *Biddison* Advice Letter, No. A-00-149; *Barrett* Advice Letter, No. A-00-114; *Fogel* A-00-109; *Shulman* Advice Letter, A-97-208.) In four of these letters, no conflict of interest would now be presumed under Phase 2 rules because the distance between the official’s property and the subject property was more than 500 feet. It is possible that the same result would have occurred in the fifth letter but we are unable to tell due to insufficient facts.

C. Other Comments from Small Jurisdictions About Regulations 18707.1 and 18707.3

A number of issues were raised in response to staff’s request for public input on regulations 18707.1 and 18707.3. In addition to previous comments as noted in this memorandum’s introduction, representatives from Sutter Creek, Indian Wells, Barstow, La Habra Heights, Jackson, Canyon Lake, or Plymouth submitted comments. While these issues are gleaned from the responses of only a limited number of small jurisdictions, they do provide some insight into how the “public generally” exceptions are used and perceived by small jurisdictions.

1. 500-Foot Issue

Some representatives of small jurisdictions agreed that Phase 2 amendments changing the 300-foot rule to a 500-foot rule made the small jurisdiction exception more restrictive. As noted above, the proposal to reduce the distance to 300 feet was rejected by the Commission at its December 2002 meeting. The Commission opted to repeal regulation 18707.3 and questioned whether there was any ground for treating an official in a small jurisdiction differently from an official in a large jurisdiction when the circumstances causing the conflict of interest were the same in both situations. (Minutes of December 13, 2002, Commission meeting.)

Also, as discussed above, a review of the past advice letters issued to small jurisdictions, show that today, under Phase 2 rules, many of these officials would be presumed to *not* have a conflict of interest because their property would be more than 500 feet from the property which triggered the conflict of interest. Consequently, if these past advice letters serve as an indicator of the type of fact patterns common in small jurisdictions, then it appears that the “public generally” exception does not need to be applied as often.

2. Application of the General Rule

Several jurisdictions preferred retention of the small jurisdiction exception (regulation 18707.3). They indicated that regulation 18707.1 is more difficult for them to apply.

Staff is unclear why the general rule may be more difficult to apply. One perceived barrier has been described by Karin Troedsson. In a comment letter submitted by Ms. Troedsson on July 19, 2001, she indicated that determining the significant segment for purposes of the general rule can be complicated. For example, in Yountville, because two large mobile home communities occupy property at one end of Yountville, her office has experienced a degree of difficulty in applying regulation 18707.1. She explained that Yountville has two mobile home communities and that the mobile home residents, while they may own their mobile homes, are not owners of the underlying property but only renters and therefore are not “property owners” for purposes of regulation 18707.1. To deal with this issue, she asked the Commission to also consider reinstatement of the alternative standard of “households.”

Subdivision (b)(1)(B) of regulation 18707.1 defines a “significant segment” to be comprised of either “property owners” or “homeowners”⁶ who are affected by the decision. Therefore, public officials who are renters would ordinarily apply subdivision (b)(1)(A), the public generally exception applicable to “individuals.” Since there is no real property interest to analyze as a potentially disqualifying economic interest, these individuals analyze how their personal finances are affected by a governmental decision. In a mobile home situation, rental expenses or fees may be affected by the governmental decisions.

However, a resident of a mobile home may possess an “interest in real property” because an “interest in real property” includes, in part, any leasehold interest, except for the interest of a tenant in a periodic tenancy of one month or less. (Section 82033; regulation 18233.) This language was retained by the Commission during its Phase 2 project in order to more closely tie the definition of “significant segment” to the nature of the economic interest of the official at issue (i.e., business entities, real property, individuals who are sources of income, etc.). (See “Final Adoption of Phase 2 Conflict of Interest Regulations,” Memorandum to the Commission, November 28, 2000.)

Therefore, it is true that a public official who rents, as opposed to a public official who owns real property, may have to apply different “significant segment” subdivisions of regulation 18707.1. However, when the Commission considered amendments to this regulation under Phase 2, it was determined that it was appropriate to align the “significant segments” with the type of economic interest that triggered the conflict; i.e., real property conflict with ownership of property segment, investment conflict with business entity segment, etc.

As part of that determination, the Commission deleted the term “households” from the “significant segment” analysis applicable to real property interests. Since the term “household”

⁶ A “property owner” generally refers to a person who owns improved or unimproved real property (commercial, governmental or residential). (*Nerland* Advice Letter, No I-02-059; *Furth* Advice Letter, No. A-99-035.) A “homeowner” appears to mean an individual who owns residential property that is his or her domicile or principal place of residence; thus, “homeowner” excludes a person who owns a non-owner occupied residential dwelling or commercial structure. (*Ibid.*)

could include non-property owners, it tended to cause confusion about the type of information that was relevant for purposes of analyzing the exception when the conflict was triggered by ownership of real property. (*Ibid.*) One Commissioner noted that the term was “imprecise” and Enforcement Division staff indicated that “household” information is not available, making it meaningless from an Enforcement point of view. (Minutes of July 7, 2000, Commission meeting.) As a result, the Commission specifically limited the language of regulation 18707.1 to property owners or homeowners. Even if the Commission were to read the term household to the “significant segment” standard, the official would still need to show that these mobile home park tenants were affected in the same manner as the official where his or her real property interest was materially affected. In addition, under regulation 18707.3(a)(4), a public official must determine if 100 properties “under separate ownership” are affected. To the extent there is an issue here the Commission should address, it is an issue under regulation 18707.3 as well.

In summary, although the significant segment issue arises for the town of Yountville due to its mobile home communities, this issue is not a small jurisdiction issue per se. It is an issue that may come up for a jurisdiction of any size depending on the facts surrounding the decision. (See *Flitner* Advice Letter, No. I-92-065.) Staff is not aware that this issue is significant enough to warrant a change to regulation 18707.1.

4. Obtaining Data

With regard to determining the significant segment for the general rule, the small jurisdictions surveyed in December indicate they use county tax assessor information. However, in more than one jurisdiction, using tax assessor information takes time and effort to obtain. One jurisdiction commented that this type of information is not up-to-date, cannot be provided on a timely basis, and is costly to apply. Another jurisdiction stated that county assessor tax rolls are not accessible and instead uses property owner association records.

The collection of data to provide facts which the Commission staff can analyze is an important part of the conflict-of-interest analysis. However, while some small jurisdictions raise concerns about obtaining the data needed to conduct analysis under the general rule, the Commission does not mandate that a particular data source be used to determine the significant segment. In fact, the Commission does not act as a finder of fact in issuing advice pursuant to the *Oglesby* opinion. (*In re Oglesby* (1975) 1 FPPC Ops. 71; see *Biggs* Advice Letter, No. A-02-102.)⁷ However, a public official must ultimately make the determination of whether each requirement of the general rule is factually met, and the problem may be that public officials are not comfortable with the data sources their jurisdictions have to aid them in making these determinations, or the methods they use to calculate whether a “significant segment” is impacted by a particular decision when they extrapolate from data sources. In any event, facts submitted by a public official are treated the same regardless of whether the general rule or the small jurisdiction exception is applied.

5. Requirements of the Small Jurisdiction Exception

⁷ Advice letters issued by the Commission do not evaluate the accuracy of facts provided by an official. Rather, facts submitted by an official are relied on in the legal analysis conducted by staff. (See *Del Guercio* Advice Letter, No. I-01-116; *Reagan* Advice Letter, No. A-01-088.)

Some small jurisdictions surveyed tend to apply only the general rule. One reason is that some cities do not commonly deal with potential conflicts of interest arising from real property ownership because major decisions (capital facilities programs for streets, storm drains and sewers) often involve large sections of the city, meeting the 10% standard. Another reason is that requirements of the small jurisdiction exception are rarely met due to characteristics of the jurisdiction including location of residential properties and typical parcel size. Repeal of regulation 18707.3 would not adversely affect those small jurisdictions which cannot currently meet the restrictive conditions of the small jurisdiction exception and already apply the general rule exclusively.

D. Another “Public Generally” Exception Applicable to Residential Properties

In addition to the general rule, regulation 18707.9 can also offer relief to officials in both small and large jurisdictions where the economic interest at issue is real property. This regulation provides:

“(a) The effect of a governmental decision on a public official’s real property interests is indistinguishable from the effect on the public generally if 5,000 or ten percent or more of all property owners or all homeowners in the jurisdiction of the official’s agency or the district the official represents are affected by the decision and the official owns three or fewer residential property units. A public official’s principal residence, as defined in Title 2, California Code of Regulations, section 18707.3(b), does not count as a unit for purposes of this subdivision.

(b) The effect of a governmental decision on any of a public official’s economic interest (including real property and business interests) is indistinguishable from the effect on the public generally if all of the following apply:

(1) The decision is to establish, eliminate, amend, or otherwise affect the respective rights or liabilities of tenants and owners of residential property pursuant to a resolution, rule, ordinance, or other law of general application;

(2) No economic interest of the public official other than one created by ownership of residential real property, or the rental of that property, is analyzed under this regulation;

(3) The official’s economic interests are not directly involved in the decision (as provided in Title 2, California Code of Regulations, sections 18704.1, 18704.2(a), and 18705.1);

(4) The decision affects at least ten percent of the residential property units in the jurisdiction of the public official or district he or she represents; and

(5) The decision will affect the official’s economic interests in substantially the same manner as it will affect other residential property owners or owners of residential rental property. A public official will be affected in substantially the same manner for purposes of this subdivision if the decision will be applied on a proportional or ‘across-the-board’ basis on the official’s economic interests as on other residential property owners or other owners of residential rental property affected by the decision.”

It is not clear whether this relatively new rule has been fully utilized by officials with conflicts of interests arising from real property interests.

E. Exceptional Circumstances

Regulation 18707.1(b)(E) also contains an important exception that may not be frequently applied by small jurisdictions. This exception allows the creation of “a segment” of the population not defined in other subdivisions of the regulation to apply the exception under special circumstances. Staff believes small jurisdictions like the Town of Yountville may be able to apply this exception.

IV. CONCLUSION AND STAFF RECOMMENDATION

In this memorandum, staff analyzed the application of regulation 18707.1 to small jurisdictions employing several methods: 1) analysis of how the general rule would apply to facts previously analyzed under the small jurisdictions exception, 2) review of past advice letters, and 3) examination of comments from representatives of small jurisdictions. The staff analysis did not reveal why the general exception would result in more complicated analysis than what is currently necessary under regulation 18707.3, nor did it reveal how current regulation 18707.3 would result in less disqualification by public officials. In fact, changes made by the Commission under Phase 2 have significantly reduced the need to use exceptions, rendering current special exceptions, such as the one provided in regulation 18707.3 unnecessary. As such, staff finds no basis to object to the Commission’s decision to formally repeal regulation 18707.3 and recommends that action.

Staff’s regulatory work plan for 2003 currently includes an examination of the “public generally” rule as it applies to general plan decisions. If the Commission would like staff to further analyze issues such as those pertaining to “households,” staff recommends the Commission direct the staff to expand the scope of that project to further examine whether those concerns are legitimate as they apply to all jurisdictions, not just small jurisdictions.

Attachments

Attachment 1 – Table of Letters Citing Small Jurisdiction Exception

Attachment 2 – Regulations 18707.1 and 18707.3